

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

JACOB WHEELER

Plaintiff,

VS.

USA TRUCK, INC., ALEXANDER D.  
GREENE, JAMES D. REED, M. SUSAN  
CHAMBERS, ROBERT E. CREAGER, GARY  
R. ENZOR, BARBARA J. FAULKENBERRY,  
and RAJAN C. PENKAR,

Defendants.

Case No.

# COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

## JURY TRIAL DEMANDED

Plaintiff Jacob Wheeler (“Plaintiff”), upon information and belief, including an examination and inquiry conducted by and through his counsel, except as to those allegations pertaining to Plaintiff, which are alleged upon personal belief, alleges the following for his Complaint:

## NATURE OF THE ACTION

1. Plaintiff brings this action against USA Truck, Inc. (“USA Truck” or the “Company”) and its corporate directors for violating Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a)(4), and 78t(a). By the action, Plaintiff seeks to enjoin the vote on a proposed transaction pursuant to which DB Schenker (“DB Schenker”) will acquire the Company (the “Proposed Transaction”).

2. On June 23, 2022, USA Truck entered into an Agreement and Plan of Merger with Schenker, Inc. (“Parent”), a subsidiary of DB Schenker, and Parent’s wholly owned subsidiary Tango Merger, Inc. (“Merger Sub”) (the “Merger Agreement”). The Merger Agreement provides that USA Truck stockholders will receive \$20.00 in cash per share of USA Truck common stock in connection with the Proposed Transaction.

3. On August 3, 2022, USA Truck filed a Definitive Proxy Statement on Schedule 14A

(the “Proxy Statement”) with the SEC. The Proxy Statement, which recommends that USA Truck stockholders vote in favor of the Proposed Transaction, omits or misrepresents material information necessary and essential to that decision. Defendants authorized the issuance of the false and misleading Proxy Statement in violation of Sections 14(a) and 20(a) of the Exchange Act.

4. It is imperative that the material information omitted from the Proxy Statement is disclosed to the Company’s stockholders prior to the forthcoming stockholder vote so that they can properly exercise their corporate suffrage rights, among other reasons.

5. Accordingly, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to the Company’s stockholders or, in the event the Proposed Transaction is consummated, to recover damages resulting from the defendants’ violations of the Exchange Act.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(d), 14(e) and 20(a) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

7. The Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because defendants are found or are inhabitants or transact business in this District.

### **THE PARTIES**

9. Plaintiff is, and has been at all times relevant hereto, a stockholder of USA Truck.

10. Defendant USA Truck is a Delaware corporation with its principal executive offices located at 3200 Industrial Park Road, Van Buren, Arkansas 72956. USA Truck's shares trade on the Nasdaq Global Select Market under the ticker symbol "USAK." Founded in 1983, USA Truck operates as a truckload carrier in the United States, Mexico, and Canada. USA Truck operates in two segments: Trucking and USAT Logistics. The Company's Trucking segment offers motor carrier services as a medium-haul common and contract carrier, and freight services. The Company's USAT Logistics segment provides freight brokerage, logistics, and intermodal rail services.

11. Defendant Alexander D. Greene is and has been Chairman of the Board and a director of the Company at all times relevant hereto.

12. Defendant James D. Reed has been the President, Chief Executive Officer, and a director of the Company at all times relevant hereto.

13. Defendant M. Susan Chambers is and has been a director of the Company at all times relevant hereto.

14. Defendant Robert E. Creager is and has been a director of the Company at all times relevant hereto.

15. Defendant Gary R. Enzor is and has been a director of the Company at all times relevant hereto.

16. Defendant Barbara J. Faulkenberry is and has been a director of the Company at all times relevant hereto.

17. Defendant Rajan C. Penkar is and has been a director of the Company at all times relevant hereto.

18. Defendants identified in paragraphs 11-17 are referred to herein as the "Board" or the "Individual Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **The Proposed Transaction**

19. On June 24, 2022, USA Truck announced in relevant part:

**VAN BUREN, AR and ESSEN, GERMANY / ACCESSWIRE / June 24, 2022** / DB Schenker, one of the world's leading logistics service providers, and USA Truck (NASDAQ:USAK), a leading capacity solutions provider, today announced an agreement under which DB Schenker will acquire all outstanding shares of USA Truck common stock for \$31.72 per share in cash. The transaction values USA Truck at approximately \$435 million, including assumed cash and debt.

The combination advances DB Schenker and USA Truck's shared vision to become the premier North American transportation solutions provider. Upon completion of the transaction, DB Schenker aims to strengthen and expand USA Truck's presence in North America, while utilizing its complementary international logistics expertise, air transport services and ocean gateways to benefit USA Truck's existing customer base. Building upon USA Truck's existing U.S. and Mexico freight network, DB Schenker also intends to expand its global logistics services across land, air, and ocean transportation services, as well as comprehensive solutions for logistics and global supply chain management.

Founded in 1983, USA Truck provides comprehensive capacity solutions to a diverse North American customer base, including more than 20% of the FORTUNE 100. USA Truck's approximately 1,900-unit fleet of trucks, 2,100 employees, partnerships with more than 36,000 active contract carriers, strategic network of terminals across the Eastern half of the United States and a nationwide third-party logistics presence provides capacity solutions to meet the evolving demands of both regional and national customers.

"USA Truck is the perfect match for DB Schenker's strategic ambition to expand our network in North America and foster our position as a leading global logistics provider," said Jochen Thewes, CEO of DB Schenker. "In our 150<sup>th</sup> anniversary year, we are pleased to welcome one of the leading trucking and logistics providers to DB Schenker. Together we will enhance our shared value proposition and invest in exciting growth opportunities and sustainable logistics solutions for new and existing clients."

"We are thrilled to have found a partner that appreciates USA Truck's rich history, is closely aligned with our mission and values, and brings additional resources that we believe enable us to build on our nearly 40-year legacy of industry leadership," said James Reed, President and Chief Executive Officer of USA Truck. "This transaction provides immediate and significant value for USA Truck stockholders, offers broadened career opportunities for our employees and increased capacity and service offerings with which to support our customers, and better positions our company to realize our long-term vision to become the premier North American transportation solutions provider."

“This transaction recognizes the culture of excellence James, his team and all of our dedicated employees have created and commit to every day at USA Truck. It rewards our stockholders for their unwavering support during our turnaround and through the pandemic and offers further opportunity for our customers to draw upon USA Truck’s strengths utilizing the resources and reach of one of the world’s leading logistics services organizations,” commented Alexander Greene, Chairman of the Board of USA Truck.

Joe Jaska, DB Schenker’s Executive Vice President Land Transport, Americas Region commented, “USA Truck’s success has been driven by their impressive employees - all of whom are critical to future growth - and we look forward to welcoming them as an integral part of our team. As part of a larger organization with DB Schenker, USA Truck employees will have access to career opportunities at both the local and global level. We view this transaction as a platform for growth and by combining these organizations, we will greatly enhance our presence in the North American land transport space.”

With more than 76,000 employees at more than 1,850 locations in over 130 countries, DB Schenker, a 100 percent subsidiary of Deutsche Bahn, is one of the world’s leading logistics providers. The company operates land, air, and ocean transportation services, and it also offers comprehensive solutions for logistics and global supply chain management from a single source. In the Americas, DB Schenker is one of the largest integrated logistics service providers with more than 10,000 employees in 123 locations providing over 27 million sq. ft. of distribution operations to its clients. With integrated partners across the Americas, DB Schenker provides the best combination of intimate local practices knowledge and global capabilities.

#### **Transaction Details**

The transaction, which has been unanimously approved by USA Truck’s Board of Directors, is subject to certain regulatory reviews and approvals and the satisfaction of other customary closing conditions, including the approval of USA Truck stockholders. Upon completion of the transaction, which the parties expect will occur by the end of 2022, USA Truck will become a private company and delist from NASDAQ Global Select Market. The transaction is not subject to any financing condition.

#### **Advisors**

Evercore is serving as financial advisor and Scudder Law Firm, P.C., L.L.O. is serving as legal counsel for USA Truck.

Morgan Stanley & Co. Int. PLC is serving as financial advisor and Latham & Watkins LLP is acting as legal counsel for DB Schenker.

#### **The Proxy Statement Contains Material Misstatements or Omissions**

20. Defendants filed a materially incomplete and misleading Proxy Statement with the

SEC and disseminated it to USA Truck's stockholders. The Proxy Statement misrepresents or omits material information necessary for the Company's stockholders to make an informed voting or appraisal decision on the Proposed Transaction.

21. Specifically, as set forth below, the Proxy Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning the Company's financial forecasts and the financial analyses that support the fairness opinion provided by the Company's financial advisor, Evercore Group L.L.C. ("Evercore").

***Material Misrepresentations and/or Omissions Concerning USA Truck's Financial Forecasts and Evercore's Financial Analyses***

22. The Proxy Statement fails to disclose material information concerning the financial forecasts for USA Truck, including the line items underlying the Company's financial forecasts for: (a) Operating revenue excluding fuel charge; (b) Adjusted operating income; (c) Adjusted earnings per diluted share; (d) Adjusted operating ratio; (e) Adjusted EBITDAR; (f) Adjusted EBITDA; (g) Adjusted EBIT; (h) Net Operating Profit After Tax; and (a) Unlevered Free Cash Flow.

23. The Proxy Statement also fails to disclose material information concerning the financial analyses underlying Evercore's fairness opinion.

24. With respect to the *Discounted Cash Flow Analysis* performed by Evercore, the Proxy Statement fails to disclose: (a) the Company's terminal year unlevered, after-tax free cash flow; (b) its terminal values; (c) the inputs and assumptions underlying the range of discount rates utilized by Evercore in connection with the analysis; (d) USA Truck's cash, debt and finance lease obligations; and (v) its fully diluted outstanding shares.

25. With respect to the *Selected Public Company Trading Multiples Analysis* performed by Evercore, the Proxy Statement fails to disclose: (a) the individual multiples and financial metrics for each of the selected companies analyzed by Evercore; (b) the Company's estimated EBITDA and

earnings per share for 2022 and 2023; (c) the Company's cash, debt and finance lease obligations; and (d) the Company's fully diluted outstanding shares.

26. With respect to the *Premiums Paid Analysis* performed by Evercore, the Proxy Statement fails to disclose the transactions analyzed; and the individual premiums observed for each.

27. With respect to the *Equity Research Analyst Price Targets Analysis* performed by Evercore, the Proxy Statement fails to disclose the individual price targets observed and the sources thereof.

28. The omission of the above-referenced information renders statements in the "Forward-Looking Financial Information" and "Opinion of Evercore Group L.L.C." sections of the Proxy Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the stockholder vote, Plaintiff and the other stockholders of USA Truck will be unable to make a sufficiently informed decision in connection with the Proposed Transaction and are thus threatened with irreparable harm warranting the injunctive relief sought herein.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Claims for Violation of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and USA Truck**

29. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

30. The Individual Defendants disseminated the false and misleading Proxy Statement, which contained statements that, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially misleading, in violation of Section 14(a) of the Exchange Act and Rule 14a-9. USA Truck is liable as the issuer of these statements.

31. The Proxy Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Proxy Statement.

32. The Individual Defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.

33. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy Statement and in other information reasonably available to stockholders.

34. The Proxy Statement is an essential link in causing Plaintiff and the Company's stockholders to approve the Proposed Transaction.

35. By reason of the foregoing, defendants violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder.

36. Because of the false and misleading statements in the Proxy Statement, Plaintiff is threatened with irreparable harm.

## **COUNT II**

### **Claims Against the Individual Defendants for Violation of Section 20(a) of the Exchange Act**

37. Plaintiff repeats all previous allegations as if set forth in full.

38. The Individual Defendants acted as controlling persons of USA Truck within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of USA Truck and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the Proxy Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the



decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

39. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

40. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Proxy Statement at issue contains the unanimous Proxy of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

41. In addition, as the Proxy Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Proxy Statement purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

42. By virtue of the foregoing, the Individual Defendants have violated section 20(a) of the Exchange Act.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of USA Truck, and against defendants, as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction and any vote on the Proposed Transaction, unless and until defendants disclose and disseminate the material

information identified above to USA Truck stockholders;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

C. Declaring that defendants violated Sections 14(d), 14(e) and/or 20(a) of the Exchange Act;

D. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: August 25, 2022

**LONG LAW, LLC**

By /s/ **Brian D. Long**

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